Supreme Court, U. S.
FILED
MAR 31 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1255

JAMES E. DOUGLAS, JR.,

Appellant,

v.

SEACOAST PRODUCTS, INC., THE NEW SMITH MEAL COMPANY, INC., and SECOND OCEANIC CORPORATION,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

BRIEF OF NEW YORK STATE AS *AMICUS CURIAE* IN SUPPORT OF JURISDICTIONAL STATEMENT

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for State of New York
P. O. & Office Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-7565

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

PHILIP WEINBERG
JOHN G. PROUDFIT
Assistant Attorneys General
of Counsel

249 Press of Fremont Payne, Inc., 417 Canal St., N. Y.—966—6570

INDEX

	PAGE
Interest of Amicus Curiae	1
Opinion Below	2
Jurisdiction	3
Statutes Involved	3
Questions Presented	3
Statement	3
The Questions Presented by this Appeal are Substantial	4
I. 16 U.S.C. § 1081 was not intended to preempt regulation of commercial fishing within their coastal waters	5
II. State laws imposing residency and citizenship requirements on commercial fishing do not violate the equal protection clause	6
Conclusion	8
Appendix A	1a

TABLE OF CITATIONS

Cases

A.E. Nettleton Co. v. *Diamond*, 27 NY 2d 182, 264 N.E. 2d 118 (1970), app. dism. for want of subn. fed. question *sub nom. Reptile Products Ass'n* v. *Diamond*, 401 U.S. 969 (1971)	5

PAGE

American Commuters Ass'n v. *Levitt*, 279 F. Supp. 40 (S.D.N.Y. 1967) aff'd 405 F. 2d 1148 (2d Cir. 1969) 7

Askew v. *American Waterways Operators*, 411 U.S. 325 (1973) 6

DeCanas v. *BICA*, —— U.S. —— (decided February 25, 1976) 6, 7

Ferguson v. *Skrupa*, 372 U.S. 726 (1963) 7

Florida Lime and Avocado Growers, Inc. v. *Paul*, 373 U.S. 132 (1963) 6

Huron Portland Cement Co. v. *City of Detroit*, 362 U.S. 440 (1960) 6

McDonald v. *Board of Election*, 394 U.S. 802 (1969) 7

Palladio, Inc. v. *Diamond*, 440 F. 2d 1319 (2nd Cir. 1971), cert. den. 404 U.S. 983 5

Reetz v. *Bozanich*, 397 U.S. 82 (1970) 5

Rice v. *Santa Fe Elevator Corp.*, 331 U.S. 218 (1947) 6

Skiriotes v. *Florida*, 313 U.S. 69 (1941) 6

Takahashi v. *Fish and Game Commission*, 334 U.S. 410 (1948) 7

Toomer v. *Witsell*, 334 U.S. 385 (1948) 6, 7

STATUTES

Alaska Rev. Statutes § 16.05.905 2

Delaware Rev. Statutes, Conservation Law Title 7
§ 917 2
§ 1115 2
§ 1119 2

PAGE

Maryland Code:
§ 4-618 2
§ 4-703 2
§ 4-704 2
§ 4-805 2
§ 4-1003 2

Massachusetts General Laws:
Chapter 130 § 38 2
Chapter 130 § 55 2

Michigan Statutes, Conservation § 308.24 2

Minnesota Statutes, Game and Fish Laws § 98.46 2

New Hampshire Rev. Statutes:
§ 211:23 2
§ 211.62-d 2

New York Environmental Conservation Law:
§ 13-0311 2
§ 13-0313 2
§ 13-0315 2
§ 13-0329 2
§ 13-0331 2
§ 13-0333 2
§ 13-0335 2
§ 13-0341 2

PAGE

Rhode Island Rev. Statutes:
§ 20-6-1 2
§ 20-6-2 2
§ 20-12-2 2

United States Code:
Title 16 Section 1081 ..... 3, 5
Title 28 Section 1253 3
Title 28 Section 2284 3

Vermont Statutes, Title 10 § 4608 3

Virginia Code: § 28.1-60 ..... 3, 4
§ 28.1-81.1 ..... 3, 4

Washington Rev. Code § 75.28.020 3

Wisconsin Statutes:
§ 29.34 2
§ 29.343 2
§ 29.35 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-.....

JAMES E. DOUGLAS, JR.,
Appellant,

v.

SEACOAST PRODUCTS, INC., THE NEW SMITH MEAL COMPANY, INC., and SECOND OCEANIC CORPORATION,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

BRIEF OF NEW YORK STATE AS *AMICUS CURIAE* IN SUPPORT OF JURISDICTIONAL STATEMENT

Interest of *Amicus Curiae*

The State of New York claims ownership of the fish in its waters for purposes of regulation and control.* Along with

* Environental Conservation Law § 11-0105

"The State of New York owns all fish, game, wildlife, shellfish, crustacea and protected insects in the state, except those legally acquired and held in private ownership. Any person who kills, takes or possesses such fish, game, wildlife, shellfish, crustacea or protected insects thereby consents that title thereto shall remain in the state for the purpose of regulating and controlling their use and disposition."

favor or

other coastal states, New York regulates commercial fishing in the waters off its coast. There are a number of State laws which limit fishing to residents of the state, Environmental Conservation Law §§ 13-0311 (shellfish diggers), 13-0313 (shellfish growers), 13-0315 (shellfish shippers and processors), 13-0329 (lobsters), 13-0331 (crabs), 13-0333 (menhaden) and to citizens who are residents of the state, Environmental Conservation Law §§ 13-0335 (food fish), 13-0341(7) (beam and other trawls).* Copies of these statutes are annexed hereto as Appendix A.

If the decision of the lower court is upheld, it will not only place the legality of these statutes in jeopardy, but will also endanger the historical management of fishing by New York and the other affected states in their coastal waters, endangering stocks of fish on which thousands of New Yorkers depend for a livelihood and many more for a source of food. New York like Virginia has a large body of inland water, Long Island Sound, as well as many bays which may be affected by this decision. These coastal areas are prime sources of food fish and shellfish.

Opinion Below

The opinion below was entered by a three-judge court for the Eastern District of Virginia on November 7, 1975. It is not yet reported.

which favor or limit in terms of

* Some other state statutes ~~requiring~~ residency or citizenship are: Alaska Rev. Statutes § 16.05.905; Delaware Rev. Statutes, Conservation Law, Title 7 §§ 917, 1115, 1119; Maryland Code §§ 4-618, 4-703, 4-704, 4-805, 4-1003; Massachusetts General Laws 130, §§ 38, 55, Michigan Statutes, Conservation § 308.24; Minnesota Statutes, Game and Fish Laws § 98.46; New Hampshire Rev. Statutes §§ 211:23, 211:62-d; Rhode Island Revised Statutes §§ 20-6-1, 20-6-2; Vermont Statutes, Title 10 § 4608; Washington Revised Code § 75.28.020; Wisconsin Statutes §§ 29.34, 29.343, 29.35.

Jurisdiction

A final order granting an injunction against the enforcement of §§ 28.1-60 and 28.1-81.1 of the Code of Virginia of 1950, as amended, was entered by a three-judge district court convened under 28 U.S.C. § 2284, on November 7, 1975. The jurisdiction of this Court rests on 28 U.S.C. § 1253.

Statutes Involved

The statutory provisions involved are 16 U.S.C. § 1081 and Virginia Code §§ 28.1-60 and 28.1-81.1.

Questions Presented

1. Does 16 U.S.C. § 1081, which limits foreign fishing in United States territorial waters, preempt State authority to regulate coastal fishing even though it does not so state and to the contrary recognizes the State's interest in such fishing?

2. Do State licensing statutes which limit fishing in terms of residency and citizenship violate the Equal Protection Clause, although such statutes are of ancient duration and protect a valid and significant State interest?

Statement

The appellees, plaintiffs below, non-resident corporations, challenged the constitutionality of two provisions of the Code of Virginia of 1950, as amended, §§ 28.1-60 and 28.1-81.1, which regulate fishing in that State's coastal waters and bays. Suit was brought against appellant Commissioner of Marine Resources for Virginia to enjoin his enforcement of the statutes.

The appellee, Seacoast Products, Inc., is a Delaware corporation with principal offices in New Jersey. The appellee, Smith Meal Corporation, is a Massachusetts corporation with its main office in New Jersey. Second Oceanic Corporation is a New York corporation and has its principal offices in New York. Smith Meal and Second Oceanic are wholly-owned subsidiaries of Seacoast, which in turn is ultimately controlled by Hanson Trust, Ltd., a corporation organized and existing under the laws of the United Kingdom. The appellee parent and subsidiary corporations have in the past engaged in taking menhaden from the coastal waters of Virginia, but in May of 1975 their applications for commercial fishing licenses were denied for failure to satisfy the United States citizenship requirements of the Virginia statutes.

Virginia Code § 28.1-60 in effect permits licensing of a non-resident to fish for menhaden within the 3-mile coastal waters of Virginia, but denies except as to residents the right to fish in Chesapeake Bay. Virginia Code § 28.1-81.1 in effect excludes all aliens from commercial fishing within the three-mile limit.

The court below found both statutes at issue to be unconstitutional and granted appellees' motion for summary judgment by order entered November 7, 1975.

The Questions Presented by this Appeal are Substantial.

The critical issue raised by this appeal is whether or not the states can regulate and protect the fish resources within their waters.

The need to manage fishing within their coastal waters has been recognized and acted upon by New York, Virginia, and other coastal states. In recent years there has been a particular concern for protecting and preserving the remaining fish resources from depletion because of vastly increased foreign fishing, largely by factory ships which process huge amounts of fish on board and which characteristically overfish to the point of irreversible destruction of fish stocks, and an increasing awareness of the exhaustible nature of our fisheries. The action of the Court below, if permitted to stand, will destroy the progressive actions pursued by the various states in protecting their valuable fish resources from extinction.

I. 16 U.S.C. § 1081 was not intended to preempt regulation of commercial fishing within their coastal waters.

The Court below held that 16 U.S.C. § 1081 "preempted Virginia's control of commercial sea fisheries and superseded the State's regulation of them" (Opinion, p. 5). Such a broad, devastating holding has no support in the statute itself or in the principle of preemption as developed by this Court.

The crux of 16 U.S.C. § 1081 is to prohibit foreign vessels or persons in charge of them from fishing within the territorial waters of the United States except upon certain governmental approval including "concurrence of any State, Commonwealth, territory or possession directly affected." Clearly this recognition of State interest in fishing is the very antithesis of preemption.

The Federal statute is entirely without specifics with respect to the conduct of fishing. It does not even approach the level of comparative State and Federal legislation which was present in *A.E. Nettleton Co.* v. *Diamond,* 27 N Y 2d 182, 264 N.E. 2d 118 (1970), app. dism. for want of subn. fed. question *sub nom. Reptile Products Assn.* v. *Diamond,* 401 U.S. 969 (1971),* in which an attack, claiming preemption of the New York law setting forth an expanded

---

* See also *Palladio, Inc.* v. *Diamond,* 440 F. 2d 1319 (2nd Cir. 1971), cert. den. 404 U.S. 983.

list of endangered species by the federal endangered species statute, was soundly rejected.

This Court has recognized the "unique resources" of fish and that their management is "a matter of great state concern." *Reetz* v. *Bozanich,* 397 U.S. 82, 87 (1970). This Court also has recognized the right of a state to exercise its police power to protect and regulate fishing within the three-mile limit, *Toomer* v. *Witsell,* 334 U.S. 385, 393 (1948).

It has been repeatedly held by this Court that a limited assertion of authority by Congress does not preclude non-conflicting action by the states. *Huron Portland Cement Co.* v. *City of Detroit,* 362 U.S. 440 (1960); *Askew* v. *American Waterways Operators,* 411 U.S. 325 (1973); *Skiriotes* v. *Florida,* 313 U.S. 69 (1941). The need to protect fisheries from depletion is just as compelling as the need to protect air quality and water quality properly sustained in those decisions.

The finding of preemption by the court below required a demonstration that it was "the clear and manifest purpose of Congress" to oust the states of any power to regulate commercial fisheries, including laws not in conflict with federal laws. *DeCanas* v. *BICA,* —— U.S. —— (decided February 25, 1976); quoting *Florida Lime and Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 146 (1963); quoting *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947). Clearly no intent of Congress to so utterly exclude the States was here manifested.

II. State laws imposing residency and citizenship requirements on commercial fishing do not violate the equal protection clause.

The State of New York, as well as Virginia and other states, has enacted laws which seek to protect and preserve its fisheries and which classify in terms of residency

and citizenship. This Court has held that residents and non-residents may be treated differently so long as there are valid reasons for doing so. *Toomer* v. *Witsell,* 334 U.S. 385, 396 (1948). In *American Commuters Ass'n* v. *Levitt,* 279 F. Supp. 40 (S.D.N.Y. 1967), aff'd 405 F. 2d 1148 (2nd Cir. 1969), a New York statute requiring higher fees for non-resident than resident fishing licenses was upheld as against similar claims that it denied equal protection.

This is clearly not a situation like that in *Takahashi* v. *Fish and Game Commission,* 334 U.S. 410 (1948), relied on by the Court below, where the restriction imposed upon aliens was patently and odiously racial and utterly unconnected with the protection of fish stocks from the assault of mechanized armadas. Furthermore, this Court in *Takahashi* at page 417 recognized that State regulations distinguishing between citizens and non-citizens are valid where they "protect special interests either of the state or of its citizens as such." Most recently this Court has affirmed this principle in upholding a California law which prohibits an employer from knowingly employing an alien not entitled to lawful residence in the United States, if such employment would have an adverse effect on lawful resident workers. *DeCanas* v. *BICA,* —— U. S. —— (decided February 25, 1976).

The court below incorrectly held that any distinction between citizens and non-citizens was *per se* unconstitutional. State Legislatures are presumed to have acted constitutionally and for valid reasons. *McDonald* v. *Board of Elections,* 394 U.S. 802, 809 (1969); *Ferguson* v. *Skrupa,* 372 U.S. 726, 730 (1963). The State of Virginia at least should have been and should be given an opportunity to demonstrate that there are valid independent reasons for the differentiation between residents, non-residents and aliens in the area of fishery protection. *Toomer* v. *Witsell, supra,* 334 U.S. at 396.

We are convinced that valid reasons exist for different treatment of non-resident and alien commercial fishermen from residents, as evidenced by the enactment of similar laws in New York and other coastal states, and that such laws should not be lightly swept aside, leaving our coastal fisheries vulnerable to decimation to the detriment of numerous fishermen, shellfishermen, processors and consumers.

CONCLUSION

For the reasons herein stated this Court should note probable jurisdiction in this case.

Dated: New York, New York, March 25, 1976.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for the State of New York

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

PHILIP WEINBERG
JOHN G. PROUDFIT
Assistant Attorneys General
of Counsel

Appendix A

§ 13-0311. Digger's permit to take shellfish for commercial purposes; when not required

1. Subject to the provisions of this article, a person who has been a resident of this state for six months immediately prior to the date of application may take shellfish from under water lands in the state for commercial purposes upon first obtaining a digger's permit from the department, provided, however, that the application for such permit by a person sixteen years of age or under shall be signed by his parent or legal guardian, who shall thereby consent to the issuance of the permit.

2. The department shall prescribe and furnish forms for application for such permit.

3. The fee for such permit shall be seven dollars and fifty cents. Such permit shall expire on December 31 of the year of issue. If it appears in the public interest, the department may, after hearing held on ten day's notice, suspend or cancel such permits, except that in case of a taking from an uncertified area such suspension or cancellation may be without prior notice.

4. The holder of such permit shall not ship or sell shellfish except to a holder of a valid Class A, D, or G shipper's permit who has a place of business in the township or borough in which such shellfish were harvested, without first obtaining a shipper's permit as provided in subdivision 1 of section 13-0315.

5. Subject to the provisions of this article, a person may, without permit, take from public certified areas not to exceed two pecks of shellfish in any one day for his own or his family use.

Appendix A.

6. The holder of such digger's permit shall carry the permit assigned to him on his person while engaged in the permitted activities, and the failure by such holder to exhibit his permit to any shellfish inspector, conservation enforcement officer, health official, peace officer or magistrate shall be presumptive evidence that no valid digger's permit has been issued to him.

§ 13-0313. Shellfish growers; definitions; bed permit

1. Any person resident in this state one year or more may engage in the cultivation and marketing of shellfish subject to the provisions of sections 13-0307, 13-0309, 13-0311 and 13-0319 and shall be known as a grower.

2. A grower shall not take shellfish, for shipping or marketing from lands owned, leased or rented by him, except upon permit of the department which shall certify that such lands lie within certified areas. The department shall prescribe and furnish forms for application for such permits.

3. The fee for such permit shall be twenty-five cents for each acre from which shellfish are to be taken; provided, however, that the minimum fee shall be five dollars. Such certificates shall expire on December 31 of the year of issue.

4. If it appears in the public interest, the department may suspend or cancel any such permit.

5. Where lands for which such permit has been issued are found to be in part within an uncertified area, the department shall issue without fee, a new permit covering the remaining portion of such lands.

6. In case of assignment or transfer of rights or ownership of any private or leased lands under water, or parts thereof, a new permit shall be required.

Appendix A.

§ 13-0315. Shellfish shipper's and processor's permit

1. Prior to the processing, transportation or shipment of shellfish, either in intra-state or inter-state commerce, an appropriate permit so to do shall be obtained from the department. Such permit shall be required of all shippers and dealers in fresh and frozen shellfish within the state, except retail dealers, and shall certify that the holder thereof has complied with all the requirements of sections 13-0309, 13-0311, 13-0313, 13-0317 and 13-0319.

2. A shellfish shipper's and processor's permit shall be granted to those applicants who comply with the rules and regulations of the department, except that no Class F permit as specified in paragraph f of subdivision 3 of this section shall be issued to a person less than eighteen years of age. The department shall prescribe and furnish forms for application for such permit.

3. Applicants shall pay, and the department shall be entitled to receive, fees according to the type of permit issued, as follows:

a. Class A permit, one hundred dollars. This permit shall allow the holder thereof and any person in his employ to cull, open, shuck, pack and repack shellfish, and to distribute and ship shellfish, either in the form of shell stock or as fresh or frozen open stock, in inter-state and intra-state commerce.

b. Class B permit, fifty dollars. This permit shall allow the holder thereof and any person in his employ to redistribute and reship shellfish which have been purchased from holders of Class A, D, E, F or G shipper's permits, either in the form of shell stock or as fresh or frozen open stock, in inter-state and intra-state commerce. Such redistributions and reshipments of fresh or frozen open

stock shall be made only in the original containers in which received, and shall not be tampered with in any way.

c. Class C permit, twenty-five dollars. This permit shall allow the holder thereof and any person in his employ to redistribute and reship shellfish, which have been purchased from holders of Class A, D, E, F or G permits, in the form of shell stock or as fresh or frozen open stock in intra-state commerce only. Such redistributions and reshipments of fresh or frozen open stock shall be made only in the original containers in which received, and shall not be tampered with in any way.

d. Class D permit, fifty dollars. This permit shall be issued only to growers and shell stock shippers, except reshippers, and shall allow the holder thereof and any person in his employ to call and pack shellfish in the form of shell stock only which have been harvested by the growers or purchased from shellfish shippers, or purchased from holders of diggers' permits who are residents in the town in which the permittee's place of business is located, and to distribute and ship the same in inter-state and intra-state commerce.

e. Class E permit, ten dollars. This permit shall allow the holder thereof to ship in inter-state and intra-state commerce shellfish in the form of shell stock only, which he has legally removed from natural or public shellfish grounds.

f. Class F permit, two dollars and fifty cents. This permit shall allow the holder thereof to distribute and ship in intra-state commerce shellfish in the form of shell stock only, which he has legally removed from natural or public shellfish grounds.

g. Class G permit, ten dollars. This permit shall allow the holder thereof and members of his immediate family,

or not more than two persons in his employ to open, shuck and pack bay scallops only and to distribute and ship bay scallops in the form of fresh open stock only, in intra-state commerce.

h. Shipper's permits shall expire on December 31 of the year of issue. The department may suspend or revoke any such permit at any time on failure of the holder thereof to comply with the conditions thereof.

§ 13-0329. Lobsters; permit to take; when not required; prohibited acts

1. A person may take lobsters (Homarus americanus) for commercial purposes upon first obtaining a permit from the department.

a. A person who has been an actual resident of the state for six months immediately prior to the date of application may take lobsters from the waters of the state upon first obtaining a permit from the department. For purposes of this paragraph the term "actual resident'' shall mean a person who resides within the state at a bona-fide residence.

b. The department shall prescribe and furnish forms for application for such permit.

c. The fee for such permit shall be five dollars.

d. Subject to the provisions of this article, a person who is a resident of the state may take without permit not to exceed six lobsters for his own or family use in any one day.

2. Until January 1, 1979, a non-resident of the state who is a resident of a state that provides reciprocal permits or licenses to New York state residents or a person resident for less than six months immediately prior to the date of application may, upon first obtaining a permit from the

department, take lobsters only from the waters of the state westerly and southerly of a straight line drawn from the Flushing Green Light Number 9 Whistle Buoy at Cerebus Shoals (located approximately seven miles northwesterly to Montauk Point) northwesterly to Race Rock and thence due north to the New York-Connecticut interstate boundary line.

3. Lobster permits shall be nontransferable and shall expire on December 31 of the year of issue. If it appears in the public interest, the department may suspend or cancel any such permit on ten days' written notice to the holder thereof.

4. Buoys or markers of prescribed design shall be used in designating the location of licensed lobster pots or traps in such manner as shall be required by the department.

5. a. Except as provided in subdivision 4 of section 11-0515 only lobsters measuring three and three-sixteenths inches or more from the rear end of the eye socket along a line parallel to the center line of the body shell (carapace) to the rear end of the body shell (carapace) may be taken, possessed, bought, sold, imported and exported.

b. A lobster that has been damaged or mutilated to the extent that its length from the rear end of the eye socket along a line parallel to the center line of the body shall (carapace) to the rear end of the body shell (carapace) cannot be determined shall not be possessed, sold or trafficked in, except that a detached lobster tail composed of the six abdominal segments and fan in the shell (fan composed of uropods and telson) may be possessed, sold or trafficked in provided that the sixth abdominal segment, being that segment nearest the fan, is one and one-sixteenth inches long or more when measured along the dorsal center line with the tail flexed.

c. Lobsters in spawn shall not be taken or possessed at any time.

d. Detached lobster claws may be possessed only in conjunction with legally possessed detached lobster tails. The number of detached lobster claws in possession shall not exceed twice the number of legally possessed detached lobster tails.

e. Landing of lobster or parts thereof not in the shell is prohibited.

6. No person shall unduly disturb or without the consent of the licensee take or remove lobsters from a lobster pot or trap or other commercial gear.

7. It is unlawful for the operator of a motor vehicle, boat, vessel or conveyance of any kind, or any person, who has been requested or signaled to stop by an enforcement officer to throw or dump into the water any lobster, or the contents of any jail, bag, barrel or any matter whatsoever, before the enforcement officer has inspected the same.

§ 13-0331. Crabs; permit to take; prohibited acts

1. No person shall take blue-claw crabs (Callinectes sapidus) for commercial purposes without first obtaining a permit from the department.

2. A person who has been a resident of the state for six months immediately prior to the date of application may take crabs for commercial purposes from the waters of the state upon first obtaining a permit from the department.

a. The department shall prescribe and furnish forms for application for such permit.

b. The fee for such resident crabbing permit shall be fifteen dollars.

Appendix A.

3. A non-resident of the state or a person resident for less than six months immediately prior to the date of application may take crabs, for commercial purposes, only from the waters of Lower Bay and Raritan Bay southerly of a straight line drawn from Point Fort Wadsworth, Staten Island to Norton Point, Coney Island, upon first obtaining a non-resident crabbing permit from the department.

a. The department shall prescribe and furnish forms for application for such permit.

b. The fee for such non-resident crabbing permit shall be twenty-five dollars.

4. Permits are not transferable and shall expire on December 31 following the date of issue. If it appears in the public interest, the department may suspend or cancel such permits without prior notice.

5. Female crabs with eggs visible thereon, commonly called sponge crabs or any female crabs from which the egg pouch or bunion has been removed shall not be taken, possessed, transported or offered for sale at any time.

6. Crabs shall not be taken by dredging in the waters of Hempstead bay and South Oyster bay in the county of Nassau or in the waters of Great South bay west of Captree bridge in the county of Suffolk.

§ 13-0333. Menhaden; license; prohibited acts

1. Menhaden or other fish, from which oil or fertilizer is made, subject to the provisions of section 13-0343, may be taken from the waters of the marine district provided a license is first obtained from the department.

Appendix A.

2. Each license shall be issued to cover one boat into which such fish are taken and shall be issued in the name of the owner, lessee or operator of each boat so used. License fees shall be computed on the basis of gross tonnage of the vessel to be licensed as indicated in the document, certificate of award, register, enrollment or license of such vessel issued by the United States Collector of Customs.

3. The license fee shall be: For each vessel of sixty gross tons or over, two hundred dollars; for each vessel of less than sixty gross tons, twenty-five dollars. All licenses issued under this section shall expire on December 31 following date of issue.

4. Non-residents of the state shall not fish for menhaden with purse nets in the Atlantic Ocean within three nautical miles of shore from Fire Island lighthouse to Romer Shoal lighthouse.

5. In the area of Long Island Sound extending from Buoy 13 off Eatons Neck in Suffolk County westerly to Buoy 44 off Execution Rocks and off the shoreline of Westchester County extending from Buoy 36 westerly to said Buoy 44, commercial menhaden seines may not be operated closer to shore than the following limits determined primarily from the Long Island Sound ship channel buoy line:

(a) From Buoy 13 (north shore of Long Island) to Buoy 44 (off Execution Rocks)—seining vessels must not operate closer to shore than the lines connecting the designated buoys and navigational aids.

(b) From Buoy 36 (off the shoreline of Westchester county) to Buoy 44 (off Execution Rocks)—seining vessels must operate at least one-half mile seaward from the lines connecting the designated buoys and navigational aids.

Appendix A.

Distances shall be determined from straight lines drawn between the designated buoys and navigational aids.

The following buoys and navigational aids shall be considered to be the line of demarcation: north shore of Long Island—Buoys 13, N4 (Huntington Bay) 15, 17, 19, 21 N4 (Hempstead Harbor) 23, 44 (off Execution Rocks); Westchester County—commencing at the New York state border on a line projected from Great Captain Island light to Buoy 36, Buoys 36, 38, 38A, 40, 40A, 42, black can C1 designating the port side of the Echo Bay channel entrance off New Rochelle, Buoy 44 (off Execution Rocks). As amended L.1974, c. 455, § 1.

§ 13-0335. Food fish; license; prohibited acts

1. A citizen resident of the state for not less than six months immediately preceding such taking may without license take food fish in the marine district (a) with beam traws and otter trawls, except in the Hudson river and in those waters described in section 13-0341 or section 13-0343 in which use thereof is prohibited, and (b) with nets other than beam trawls and otter trawls, except in the Hudson River and in the waters described in section 13-0343 to the extent that use of such nets is prohibited by that section in those waters.

2. Boats of non-residents may be licensed to take food fish in the marine waters of New York with beam and otter trawls, (a) operated solely from boats and (b) except with beam and other trawls in those waters described in section 13-0341 or section 13-0343, provided the boat is registered in a state which accords reciprocal fishing privileges, and provided the owner and captain are citizens of the United States and residents of a state according reciprocal privileges to residents of this state. The license shall be issued in the name of the boat.

Appendix A.

3. The license fee and the terms of the license specified in subdivision 2 of this section shall be as follows:

a. The fee shall be computed on the basis of four dollars per lineal foot or fractional part thereof of the registered length of the boat or vessel to be licensed as indicated on its document, certificate of award, register, enrollment or license, issued by the United States Collector of Customs;

b. Such license shall not be transferable;

c. Each license shall expire on the thirty-first day of December next succeeding its issue;

d. If it appears in the public interest the department may suspend or cancel any such license on ten day's notice in writing to the holder thereof.

4. It shall be unlawful for any person to render food fish into fertilizer.

5. No person shall take or remove from any legally set or operated nets or other commercial gear in the waters of the marine district any fish or crustacea without permission of the owner thereof, nor possess any fish or crustacea that has been so taken or removed.

§ 13-0341. Beam trawls and otter trawls; use prohibited in certain waters

Beam trawls and otter trawls shall not be set or used in the water areas of the marine district described in the following subdivisions:

1. In the waters of the county of Richmond and in the counties of Kings or Queens, northerly and westerly of a line from the sea end of the breakwater at Rockaway Point to Romer Shoal lighthouse, including Jamaica Bay and its adjacent bays, inlets, creeks and basins.

2. In the Atlantic Ocean within one-half mile of the coastline and in all connecting tidal waters inshore of the coastline, from Rockaway Inlet Jetty to the Town of Babylon bathing pavilion at Cedar Island Beach, and in all tidal waters inshore of a line from the Town of Babylon bathing pavilion to the sea buoy (BW S-I, Bell) at the entrance of Fire Island Inlet and thence to the seaward end of Fire Island Inlet Jetty.

3. Moriches Inlet, in Shinnecock Inlet and in Mecox Inlet within one-half mile of the narrowest part of the mouths of such inlets.

4. In Manhasset Bay southerly of a line from Barker's Point to Hewlett's (King's) Point; in Hempstead Harbor southerly of a line from Mott's Point easterly through the breakwater at Glen Cove, and in the Nissequogue River.

5. In the Harlem River and the East River east of the Triborough Bridge and in Long Island Sound west of a line drawn from Hewlett's (King's) Point to the north end of Hart Island, thence to the south end of Glen Island, and in their adjacent bays, coves, creeks and confluent waters.

6. In Flanders Bay, Great Peconic Bay, Little Peconic Bay, Noyac Bay and Shelter Island Sound, including all waters forming a part thereof or tributary thereto, lying westerly and southerly of an imaginary line extending from Conklins Point to Jennings Point and westerly and northerly of a imagianry line extending from South Ferry on Shelter Island to North Haven from April 15 to October 1.

7. In the county of Suffolk in the waters lying westerly of an imaginary line extending in a southerly direction from the most easterly end of Plum Island to the most

northerly end of Gardiners Island, and westerly of Gardiners Island, and westerly of a line extending in a southerly direction from the most southerly end of Gardiners Island to Goff Point; provided, however, that vessels and motorboats owned and operated by citizens who are residents of the state may be used in such waters in connection with the operation of beam trawls and otter trawls and other types of nets towed by such boats and vessels. Nothing in this subdivision shall be construed as legalizing the operation of any beam trawls or otter trawls in the waters described in subdivision 6 of this section from April 15 to October 1.

8. In Long Island Sound west of an imaginary line from the New York-Connecticut boundary shore line extending easterly and southerly to Eaton's Point Neck on Long Island from April 1 to November 1.